

HIGH TECH BROADBAND COALITION



BSA

BUSINESS SOFTWARE ALLIANCE



January 24, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20054

RE: Triennial Review of the Commission's Unbundling Rules
CC Docket Nos. 96-98, 98-147, 01-338

Dear Chairman Powell:

As you know, the High Tech Broadband Coalition strongly supports your efforts to reform and clarify the Commission's unbundling rules as they apply to last mile broadband facilities. Specifically, we recommend that the Commission exclude the incumbent local exchange carriers' ("ILECs") last mile integrated packet/fiber facilities from the unbundling regime, but continue to assure that the competitive local exchange carriers ("CLECs") have access to all existing non-packet loop capabilities over hybrid fiber/copper loop facilities, subject to Commission determinations with respect to "impairment." By distinguishing between legacy and last mile packet-based facilities, we believe that this framework provides a clear and competitively-sound demarcation that would promote broadband investment, deployment and facilities-based competition. The Coalition also is confident that this approach is legally sustainable, even compelled, under Section 251, the D.C. Circuit's opinion in *USTA v. FCC*, and the Commission's obligations under Section 706 of the Act.

We are writing today to express our concern about reports that some inside the Commission may be considering imposing minimum bandwidth unbundling obligations on the ILECs' last mile integrated packet/fiber facilities. This approach could substantially undermine the improved deployment incentive effects the Commission is attempting to create. The imposition of such "*unbundling lite*" obligations would create risk and uncertainty in the marketplace for several reasons: first, future Commissions easily could expand such obligations; second, Section 252 pricing dockets, which are contentious and lengthy, would be initiated in each state; and third, such a rule would be legally challengeable under the *USTA* decision. In that decision, the court vacated the Commission's Line Sharing Order due, in part, to the inter-modal competition in the broadband market and the availability of alternative facilities to requesting carriers.

Imposing minimum bandwidth unbundling obligations on the incumbents' new broadband facilities would be contrary to the *USTA* decision.

The Coalition members greatly appreciate the efforts you and the Commission staff have undertaken. We recognize that the issues facing the Commission in the broadband proceedings are both complex and controversial, but we are confident that the Commission can and will seize this historic opportunity to act decisively to restore the balance between broadband investment risk and reward, to foster true broadband competition and to unleash the full potential of the Internet for the American public.

If you have any questions concerning this letter or the High Tech Broadband Coalition in general, please contact the undersigned. Thank you.

Sincerely,

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